

**MEMORANDUM OF AGREEMENT**

**BETWEEN THE**

**NATIONAL MARINE SANCTUARY PROGRAM  
NATIONAL OCEAN SERVICE  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
U.S. DEPARTMENT OF COMMERCE**

**AND THE**

**STATE OF MICHIGAN  
MICHIGAN DEPARTMENT OF HISTORY, ARTS AND LIBRARIES**

**NOS Agreement Code: MOA-2003-21**

This Memorandum of Agreement, hereinafter referred to "Agreement," is made between the State of Michigan and the United States Department of Commerce, National Oceanic and Atmospheric Administration, National Ocean Service, through the National Marine Sanctuary Program's Thunder Bay National Marine Sanctuary and Underwater Preserve.

*Whereas*, the purpose of this Memorandum of Agreement is to prescribe the terms and conditions of an agreement for the joint management of the Thunder Bay National Marine Sanctuary and Underwater Preserve; and

*Whereas*, the State of Michigan is bordered by four Great Lakes, Lake Michigan, Lake Superior, Lake Erie and Lake Huron; and

*Whereas*, the waters of Thunder Bay and the surrounding area in Lake Huron contain one of the most concentrated areas of shipwrecks in the Great Lakes; and

*Whereas*, those shipwrecks possess extensive historical, cultural, recreational, educational, and research values of importance to the residents of Alpena County, the State of Michigan, and the nation; and

*Whereas*, the National Oceanic and Atmospheric Administration has promulgated federal regulations at 15 CFR Part 922 designating an area of approximately 448 square miles of the waters of Lake Huron and the submerged lands under, over, around, and under the underwater cultural resources in Thunder Bay as the Thunder Bay National Marine Sanctuary and Underwater Preserve; and

*Whereas*, the State of Michigan has similarly designated a 448-square mile area as the Thunder Bay National Marine Sanctuary and Underwater Preserve, to jointly protect and manage the underwater cultural resources in that area, pursuant to section 76111 of the Natural Resources and Environmental Protection Act (MCL 324.76111) and R 299.6001 of the Michigan Administrative Code; and

*Whereas*, the purposes of the Thunder Bay National Marine Sanctuary and Underwater Preserve's Designation Documents, implementing regulations, and Management Plan are to: (1) protect the underwater cultural resources of Thunder Bay and surrounding waters located within the boundaries of the Sanctuary/Preserve; (2) educate and interpret for the public the maritime heritage of the Great Lakes; (3) conduct research on underwater cultural resources (e.g., inventory and document the shipwrecks); (4) enhance recreational opportunities for the enjoyment by the public of underwater cultural resources; and (5) ensure coordination and cooperation between the Sanctuary/Preserve and other relevant state, federal and local authorities; and

*Whereas*, the State of Michigan and the National Oceanic and Atmospheric Administration each has the authority to conserve and manage underwater cultural resources located on state bottomlands;

*Now therefore*, pursuant to the National Marine Sanctuaries Act, 16 USC 1431 *et seq.*, as amended, and section 7 of the History, Arts and Libraries Act (MCL 399.707), the Parties agree to the following terms and conditions:

## **ARTICLE I - DEFINITIONS**

"Agreement" means this Memorandum of Agreement last dated and effective on December 30, 2002.

"Director" means the Director of the Michigan Department of History, Arts and Libraries.

"Effective Date" means the date on which the last signer from among the Governor of the State, the Director, and the NOAA Administrator signed this Agreement.

"Governor" means the Governor of the State of Michigan, or his or her designee.

"Joint Management Committee" or "JMC" means a NOAA/State committee as described in Article III of this Agreement and defined in the federal regulations at 15 CFR § 922.192.

"Management Plan" means the final management plan and regulations for TBNMS/UP.

"NOAA" means the National Oceanic and Atmospheric Administration.

"NOS" means the National Ocean Service.

"Party" means a Party to this Agreement.

"Programmatic Agreement" means an agreement between NOAA, the federal Advisory Council on Historic Preservation, and the State of Michigan to meet the requirements of Sections 106 and 110 of the National Historic Preservation Act of 1966, Public Law 102-575, as amended (16 USC 470f and 470h-2).

"Regulations" mean the federal Sanctuary/Preserve regulations implementing the Management Plan (15 CFR Part 922, Subpart R, Thunder Bay National Marine Sanctuary and Underwater Preserve).

"Sanctuary/Preserve" or "TBNMS/UP" means the Thunder Bay National Marine Sanctuary and Underwater Preserve.

State" or "Michigan" means the State of Michigan.

“State permit” means leases, permits, licenses, approvals, or other authorizations issued by the State for the conduct of activities or projects within the TBNMS/UP.

“Underwater cultural resource” means those resources in the Sanctuary/Preserve as defined in the Sanctuary/Preserve regulations at 15 CFR § 922.191.

## ARTICLE II - AUTHORITIES

- A. National Marine Sanctuaries Act (NMSA), 16 USC 1431 *et seq.* The NMSA authorizes the designation, protection and management of discrete marine or Great Lakes areas of special national significance as National Marine Sanctuaries. The NMSA, 16 USC 1442(a), authorizes the Secretary of Commerce to enter into cooperative agreements, grants and financial agreements, contracts, or other agreements with States, local governments, regional agencies, interstate agencies, or other persons to carry out the policies and purposes of the NMSA. Also, the NMSA, 16 USC 1442(e), authorizes the Secretary of Commerce, whenever appropriate, to enter into an agreement with a State or other Federal agency to use personnel, services, or facilities of such agency on a reimbursable or non-reimbursable basis, to assist in carrying out the purposes and policies of the NMSA.
- B. Natural Resources and Environmental Protection Act (NREPA), Public Act 451 of 1994, as amended, Part 761, Aboriginal Records and Antiquities and State Bottomlands (MCL 324.76101 *et seq.*). Sections 76101(e) and 76111 of the NREPA (MCL 324.76101 and 324.76111) authorize the establishment of state Bottomland Preserves to preserve and protect Michigan’s Great Lakes bottomland areas that contain State property of historical or recreational value. Section 76111(7) of the NREPA specifically provides for identical boundaries of the Thunder Bay Great Lakes State Bottomland Preserve and the TBNMS/UP, and for joint NOAA/State management of the Sanctuary/Preserve, as long as it remains a designated National Marine Sanctuary. The Michigan Department of History, Arts and Libraries co-manages bottomland preserves. Part 761 also authorizes the State to issue permits to recover abandoned property from Great Lakes bottomlands.
- C. NREPA, Public Act 451 of 1994, as amended, Part 325, Great Lakes Submerged Lands, (MCL 324.32501 *et seq.*). The NREPA authorizes the State to grant, convey, or lease certain un-patented lake bottomlands in the Great Lakes and to permit the private and public use of waters over submerged patented lands. The NREPA prescribes penalties for violations. The NREPA also authorizes the State to regulate dredging, filling, and placement of other materials on Great Lakes bottomlands.
- D. History, Arts and Libraries (HAL) Act, Public Act 63 of 2001, as amended (MCL 399.701 *et seq.*). The HAL Act created the Michigan Department of History, Arts and Libraries and authorizes the Director to enter into cooperative agreements, contracts, and other agreements with governmental agencies to assist with carrying out the

duties, functions, and responsibilities of the Department, including the responsibility to manage underwater bottomland preserves.

### **ARTICLE III - TERMS OF JOINT MANAGEMENT**

- A. NOAA and the State will jointly manage the Sanctuary/Preserve and its underwater cultural resources consistent with the NMSA, Michigan laws governing the protection of underwater cultural resources, the Management Plan, this Agreement, the Programmatic Agreement, and any other agreements executed to assist with managing the Sanctuary/Preserve.
- B. Pursuant to the Sanctuary/Preserve regulations at 15 CFR § 922.192, a Joint Management Committee (JMC) will oversee and engage in decision-making authority for the Sanctuary/Preserve. The JMC will be comprised of one federal employee, named by the NOAA Administrator and one state employee initially named by the Governor. The Director will name subsequent State JMC members. Responsibilities of the JMC are described at 15 CFR § 922.192.
- C. By entering into this Agreement, the State has not conveyed title to nor relinquished its sovereignty or management authority over any State-owned bottomlands or other State-owned resources, by agreeing to include those bottomlands lands and resources within the Sanctuary/Preserve boundaries.
- D. The State reserves the right to propose changes to the Management Plan and, if appropriate, NOAA shall initiate the federal rule promulgation process required to make revisions requested by the State to the regulations implementing the Management Plan. In accordance with the federal Administrative Procedure Act, 5 USC 500 *et seq.*, NOAA will base its decision on whether and how to revise any regulation on the administrative record developed during the rulemaking process.
- E. Any proposed change to the Sanctuary/Preserve regulations shall not take effect without written approval of the Governor and the Director.
- F. The imposition, extension, or renewal of Sanctuary/Preserve emergency regulations in Michigan waters shall not be authorized without approval from the Governor and the Director.
- G. NOAA will not impose user fees on any activity for public use within the Sanctuary/Preserve. Any proposed user fee is subject to disapproval by the Governor.
- H. NOAA and the State, as joint managers of the Sanctuary/Preserve, shall each provide funding and/or in-kind contributions to support the Sanctuary/Preserve, subject to the availability of congressionally or legislatively appropriated funding. Such funding or in-kind contributions shall be consistent with annual work plans approved by the JMC, in consultation with the Sanctuary Advisory Council.

- I. A Sanctuary Advisory Council comprised of 15 local members whose names shall be recommended by NOAA and the State to the Secretary of Commerce, or his or her designee, shall represent local interests.
- J. NOAA and the State agree that the scope of management of the Sanctuary/Preserve is limited to the terms of the Sanctuary/Preserve regulations. The Sanctuary/Preserve, therefore, will not:
  1. Regulate commercial fishing, recreational fishing, and hunting within the boundaries of the Sanctuary/Preserve. Such activities will continue to be subject to State regulation.
  2. Interfere with or impair fishery management practices, such as stocking programs and fisheries research.
  3. Acquire land to regulate activities landward of the ordinary high water mark. NOAA and the State have the authority to manage activities lake ward of the ordinary high water mark pursuant to the Sanctuary/Preserve regulations and applicable Michigan law.
  4. Restrict diving to or on, photographing, or otherwise enjoying shipwrecks, provided that the use or activity does not involve a prohibited activity under the Sanctuary/Preserve regulations or applicable Michigan law.
  5. Require local funding to implement the Management Plan or its regulations.

#### **ARTICLE IV - FIVE-YEAR REVIEW OF THE MANAGEMENT PLAN**

Section 304(e) of the National Marine Sanctuaries Act (16 USC 1434) requires the Secretary of Commerce to review the Sanctuary/Preserve's Management Plan and implementing regulations every five (5) years from the date of Sanctuary/Preserve designation, (i.e., October 7, 2000), and revise the Management Plan as necessary. The Parties agree that in the first five-year review, the Secretary of Commerce will re-propose the designation of the Sanctuary/Preserve, Management Plan and the regulations in their entirety. Upon the re-proposal, the Governor will have the opportunity pursuant to Section 304(b)(1) of the NMSA, to review the designation, Management Plan, and regulations and indicate if the designation or any terms of the Management Plan or regulations are unacceptable, in which case unacceptable terms shall not take effect in Michigan waters. If the Governor takes no action to terminate the designation of the Sanctuary/Preserve at the conclusion of the first five-year review, the Sanctuary/Preserve shall remain designated. In subsequent reviews, the Secretary will not re-propose the designation of the Sanctuary/Preserve, but the Governor reserves the right to propose changes to the Management Plan and regulations per Article III of this Agreement.

## **ARTICLE V - ENFORCEMENT**

NOAA-deputized State enforcement personnel and/or local law enforcement officials, as appropriate, may implement enforcement of Sanctuary/Preserve regulations within the Sanctuary/Preserve boundaries. A separate agreement may be established to provide for enforcement of the Sanctuary/Preserve regulations. Existing State criminal and civil penalties will continue in force. In addition, enforcement personnel shall be authorized to carry out enforcement provisions of 15 CFR Part 922, Subpart E (National Marine Sanctuary Program Regulations) and Subpart R (Thunder Bay National Marine Sanctuary and Underwater Preserve Regulations). Violation of a Sanctuary/Preserve regulation shall be subject to civil penalties under the NMSA (see section 307(c)), and violation of a State law shall be subject to applicable State law penalties.

## **ARTICLE VI - USE OF AWARDS FROM CIVIL PENALTIES**

Civil penalties, recovered under section 307 of the NMSA (16 USC 1437) for violations within or related to the Sanctuary/Preserve, shall be used by NOAA consistent with the requirements and priorities of the Management Plan. Similarly, to the maximum extent consistent with section 312(d) of the NMSA (16 USC 1442), any monetary recovery made under section 307, that may result from any civil action for violations within or related to the Sanctuary/Preserve, shall be used for the exclusive benefit of the Sanctuary/Preserve. Civil penalties and proceeds recovered under section 76117 of the Natural Resources and Environmental Protection Act (MCL 324.76117) shall continue to be used in accordance with section 76118 of the Natural Resources and Environmental Protection Act (MCL 324.76118).

## **ARTICLE VII - CONSULTATION AND RESOLUTION OF DISAGREEMENTS**

In the event of disagreement between NOAA and the State regarding the conduct of proposed activities or projects that may affect the underwater cultural resources within the Sanctuary/Preserve, all reasonable attempts shall be made to resolve the disagreement. Depending on the nature of the disagreement and the persons involved, the JMC may be the first body to attempt resolution. If appropriate, the JMC will consult with the Sanctuary Advisory Council to obtain local input. In the event of the inability of the JMC to reach resolution, the matter shall be elevated to the Department of History, Arts and Libraries and to the NOS for resolution. In the event of continued disagreement, the matter shall be elevated to the Administrator of NOAA and to the Governor, whose collective decision shall be final.

## **ARTICLE VIII - RESERVATION OF RIGHTS**

The Parties each retain full authority and reserve all rights to take whatever actions deemed necessary to pursue, preserve, and protect any legal right, interest, or remedy. Nothing in this Agreement is intended nor shall be construed to waive or foreclose any such authority, right, interest, or remedy.

## **ARTICLE IX - MODIFICATION PROVISIONS**

In addition to the review of this Agreement at the conclusion of five (5) years from the designation of the TBNMS/UP on October 7, 2000, this Agreement also may be amended at any time by the written mutual consent of the Parties. It is subject to reconsideration at such other times as may be required or as agreed to by the Parties.

## **ARTICLE X - DURATION**

This Agreement will become effective on the date of the last signature of the approving official of either of the Parties and shall continue in force unless terminated in conjunction with the five-year review of the Management Plan.

## **ARTICLE XI – CONFLICT RESOLUTION**


- A. Nothing in this Agreement is intended to conflict with current state or federal laws, policies, regulations, or directives. If any of the terms or conditions of this Agreement is deemed inconsistent with existing federal or state laws, policies, regulations, or directives, then those portions of this Agreement, which are determined to be inconsistent, shall be invalid. The remaining terms and conditions of this Agreement not affected by the inconsistency shall remain in full force and effect.
- B. At the first opportunity for review of this Agreement, all necessary changes will be accomplished by either an amendment to this Agreement or by entering into a new agreement or some other arrangement.



## ARTICLE XII - APPROVALS

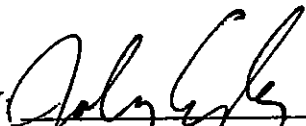
This Agreement is entered into and made effective as of the last date indicated below.

ACCEPTED AND APPROVED FOR THE  
U.S. DEPARTMENT OF COMMERCE  
NATIONAL OCEANIC AND  
ATMOSPHERIC ADMINISTRATION

BY:   
Conrad C. Lautenbacher, Jr.  
Vice Admiral, U.S. Navy (Ret.)  
Under Secretary of Commerce for  
Oceans and Atmosphere r

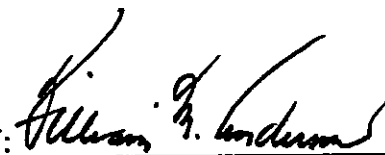
DATE: DEC 23 2002

ACCEPTED AND APPROVED FOR THE  
STATE OF MICHIGAN

BY:   
John Engler  
Governor of Michigan

DATE: 12/27/02

ACCEPTED AND APPROVED FOR THE  
STATE OF MICHIGAN,  
DEPARTMENT OF HISTORY,  
ARTS AND LIBRARIES

BY:   
Dr. William M. Anderson  
Director, Department of History, Arts and  
Libraries

DATE: 12-30-02

